

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH AND WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)
))
Plaintiffs,)
v.)
))
DEAN'S DYNAMIC CONCRETE, INC.,)
))
Defendant.)

Case No. 17 C 00892

Judge Matthew F. Kennelly

PLAINTIFFS' MOTION FOR DAMAGES

Plaintiffs, the Laborers Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), request that this Court enter a finding of damages in the amount of \$23,366.19 against Defendant Dean's Dynamic Concrete, Inc. ("Dean's") In support of this motion, Plaintiffs state:

1. On April 20, 2017, this Court entered default on behalf of the Plaintiffs and against the Defendant Dean's Dynamic Concrete, Inc., under the Employee Retirement Income Security Act of 1973 ("ERISA"), as amended, 29 U.S.C. §§1143 and 1132(g)(2) and under the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. §185(a). The Complaint sought payment for contributions covering an audit period from January 1, 2013 through March 31, 2017. This prove up seeks principal contributions, damages, interest and attorneys' fees and costs, and requests that this Court to order the Company to obtain and maintain a surety bond.

2. According to the Field Representative, Joseph Gilleran, the firm of Bansley & Kiener, LLP prepared an audit report reflecting amounts owed to the Funds. According to the report, which is attached to the Joseph Gilleran Affidavit, principal contributions are owed in the amount of \$12,168.36, covering the period from January 1, 2013 through March 31, 2017.

3. According to the collective bargaining agreement and the Funds' Trust Agreements, contributing employers who fail to pay contributions to the Funds by the tenth day of the month after the month during which the work has been performed, owe penalties to the Funds. Penalties or liquidated damages, are assessed at the rate of ten percent for amounts owed for dues and LDCLMCC, WGC and LECET Funds. Penalties owed to the Pension, Health and Welfare, Retiree Welfare and Training Funds are assessed at the rate of twenty percent and based on the unpaid contribution amounts; penalties in this case are owed in the amount of \$2,303.73 to the Funds. (Affidavit of J. Gilleran).

4. Interest is owed on all delinquent contribution amounts from the date of the delinquency forward, in the amount of twelve percent as provided by the Funds' Trust Agreements. With respect to amounts owed as shown in the audit report, interest is owed in the amount of \$1,138.44. (Exhibit 1 Gilleran affidavit).

5. According to the Agreements, contributions paid untimely are assessed late fees. In this case, the Funds' records reflect that late fees are owed in the amount of \$3,060.66. (J. Gilleran Affidavit ¶7)

6. Reasonable attorneys' fees and costs are established by an affidavit of Karen I. Engelhardt, plaintiffs' counsel. This affidavit reflects that based on hourly records the amount of \$ 3,297.50 is owed to the Funds for attorney's fees and \$535.00 is owed to reimburse costs,

consisting of filing fees and service costs. (Exhibit 2). Attorneys' fees are owed pursuant to ERISA, 29 U.S.C. § 1132(g)(2), and pursuant to the terms of the collective bargaining agreements and Trust Agreements.

7. As agreed to by the Company shown in the collective bargaining agreement, all employers are required to procure, carry and maintain a surety bond in an amount that is satisfactory to the Union. This bond must be in excess of \$5,000.00 to guarantee the payment of wages, Pension and Welfare Trust Contributions during the term of the Agreement. Plaintiffs request that Defendant within 60 days of the date of this judgment order provide written proof that it has obtained such a surety bond to plaintiffs' counsel, Karen I. Engelhardt, Allison, Slutsky & Kennedy, P.C. , 230 W. Monroe Street, Chicago, IL 60606.

Wherefore, plaintiffs drafted a proposed judgment order for a total judgment against the Defendant Dean's Dynamic Concrete, Inc., in the amount of \$23,366.19, and order Defendant to obtain and maintain a surety bond.

Respectfully submitted,

/s/ Karen I. Engelhardt
One of plaintiffs' attorneys

Allison, Slutsky & Kennedy, P.C.,
230 W. Monroe Street Suite 2600
Chicago, IL 60606
(312) 364-9400
kie@ask-attorneys.com

August 3, 2017